

**Observations on the Department of Labor's Final Regulations  
"Defining and Delimiting the [Minimum Wage and Overtime] Exemptions  
for Executive, Administrative, Professional,  
Outside Sales and Computer Employees"**

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**Executive Summary**

This document is the result of our independent review, made at the request of the AFL-CIO, of the U.S. Department of Labor's final regulation, published on April 23, 2004, revising the criteria for the Fair Labor Standards Act's (FLSA) Section 13(a)(1) exemptions for *bona fide* executive, administrative, professional, and outside sales employees, and employees in certain computer-related occupations.

The FLSA provides extremely important protections for working people and families in our country. Section 13(a)(1) of the Act gives the Secretary of Labor broad authority to "define and delimit" - through rulemaking - what has come to constitute by far the largest exception to the minimum wage and overtime protections otherwise afforded by the law.

We applaud the Labor Department for its courage, fortitude, and persistence in undertaking and completing this rulemaking. Our substantive comments on and criticisms of this extremely important rule arise from our effort to assess the extent to which the Department has achieved a reasonable, coherent, and fundamentally fair rulemaking outcome consistent with its core mission to promote and protect the interests of U.S. workers and their families.

Based on our analysis, we have concluded that in its new rule - while adjusting the compensation level required for exemption to a more realistic amount - the Department:

- moves the line of demarcation between those employees protected by the FLSA and those who are exempt substantially in the direction of exemption, so that more classes of workers, and a greater proportion of the workforce overall, will be exempt than we believe the Congress could have originally intended;
- removes existing overtime protection for large numbers of employees currently entitled to the law's protections;
- fails to restore the overtime protections intended by the FLSA to large numbers of workers who would have been protected if the "salary level" requirement had not been so substantially eroded over time;

- fails to make needed substantive revisions to the rules to provide overtime protection to the kinds of workers the Act was intended to protect;
- fails to establish reasonable and clear criteria for determining which workers are *bona fide* executive, administrative, professional, and outside sales employees whom the Congress intended to exempt from the protections of the minimum wage and overtime laws; and,
- fails to protect and promote the interests of working people in the United States consistent with its core organizational mission.

Further, in our view, the Department has written rules that are vague and internally inconsistent, that will likely result in greater confusion and a profusion of litigation – outcomes that the Department explicitly sought to avoid.

It is our conclusion that, with the sole exception of the salary level adjustment, in every instance where the Department has made substantive changes to the existing rules (and the overall conceptual underpinnings of the regulatory framework), it has weakened the regulatory criteria for, and thereby expanded the reach and scope of, the Sec. 13(a)(1) exemptions.

The Department's final rule also:

- lacks coherence because, while it articulates general principles regarding how the exemptions should be applied, it then ignores or distorts those principles in declaring that specific occupational categories qualify for exemption.
- uses court cases construing the old regulations contrary to the Department's own interpretations, as the justification for making changes that significantly expand the exemptions, in derogation of its responsibility to develop rules in accordance with its view of the appropriate scope of the exemptions.
- fails to achieve the Department's own stated goals to "*simplify, clarify and better organize the regulations ....*" The Department goes on to state that, "*Rather than broadening the exemptions, the final rule will enhance understanding of the boundaries and demarcations of the exemptions Congress created.*" In fact, it is our view that the Department did just the opposite – broadening eligibility for exemption without substantially clarifying the rules.

As a result, we believe that, with the exception of the change in the salary level test, implementation of these new regulations will harm rather than promote and protect the interests of U.S. workers and their families.